IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION No. 633 of 2005.
IN
COMPANY PETITION No. 345 of 2001.

M/s.Bhagwati Allied Services. ..Applicant.

V/s.

The Official Liquidator of
M/s.Vishnu Vijay Packagers Ltd.
(in Prov.Liqudn.) .. ..Respondent.

And

State Bank of India & Ors. ..Proposed Respondents.

Mr. D.H. Mehta with R.D. Suvarna for Applicant.

Ms. Rushui Shah with Ms. Swati Deshpande
I/b. M/s.M.S. Bodhanwala & Co. for Oman
International Bank.

Mr. Sachin Chandarwala with Simil Purohit i/b.
M/s.M.K. Ambalal & Co. for ICICI & SBI and IFCI.

Ms. K.V.Gautam, Actg. O.L.

CORAM : S.C.DHARMADHIKARI,J

DATE : 27TH JULY,2006.

P.C.

1] By this Company Application the applicant seeks recovery of security charges and in that behalf seeks further appropriate directions to the Secured Creditors whose securities are the Assets of the Company in Liquidation, presently being guarded and looked after by the Applicant Security Agency.

2] It is not in dispute that the Securities of the Company in Liquidation are the assets and

properties duly mortgaged in favour of the Secured Creditors, majority of whom are the Public Sector Banks. My attention is invited by Shri. Mehta appearing for the applicant to previous orders passed in this Company Application. He submits that as far as the assets and properties of the Company in Liquidation are concerned, they be mortgaged in favour of these banks. It is for the purpose of the Banks and the Creditors of the Company in Liquidation that services have been rendered by the applicant agency. Since the Security services are rendered by consent of the secured creditors inasmuch as the appointment of the applicant is by the consent then O.L.should release the amount of outstanding security charges, so also recurring charges from month to month. He submits that now notices have been issued to all the secured creditors and out of the total outstanding amount, payment has been made by Oman International Bank and I.I.B.I. However, the other Secured Creditors, despite notices, have not made payment. They have also not disputed their liability.

4] In support of these submissions, Mr. Mehta invites my attention to a letter dated 16th November,2005 which has been addressed by the Official Liquidator to the Secured Creditors

including ICICI Ltd. The figures of proportionate share of each of the Secured Creditors are set out in this letter. It is duly received. None has come forward to dispute the liability nor the correctness of the figures. In such circumstances, the directions be issued and the Company Application be allowed in terms of prayers.

5] Mr. Mehta has made a statement that upon payment of Rs. 3,23,785/- by Oman International Bank, their liability for the past period has been discharged. However, recurring charges have to be paid by the Oman International Bank, in so far as their security is concerned, proportionately.

6] He seeks similar directions with regard to I.I.B.I. and other financial institutions who have been put to notice by the Court.

7] With the assistance of Shri. Mehta, I have perused this Company Application, the affidavit in support and annexures thereto, so also the true copy of the letter dated 16th November, 2005 from the file of the Official Liquidator. I have perused the earlier orders including those passed by me.

8] In my view, once it is not disputed that

the services of the applicant have been hired with consent of all Secured Creditors and that services have been rendered to protect and safeguard Securities. In terms of the mandate of the Companies Act, proportionate share of the Secured Creditors towards the payment of security charges have to be deposited with the Official Liquidator and the Official Liquidator should release the amounts in favour of Security Agency. This aspect is clear because none has come forward to dispute their liability. There are no complaints made, either with regard to the quality of services rendered by the applicant agency or the amounts charged for the same. In such circumstances and when the Liquidator has been demanding the amount from time to time, it would be just and fair to direct Secured Creditors to pay their proportionate share of the security charges for the period commencing from 12th November, 2002 to 11th June,2006 and monthly charges till the date the possession of these securities are not taken over from the Security Agency.

9] The past liability has already been communicated by the letter dated 16th November,2005 and each of the Secured Creditors mentioned therein should release the amounts of their proportionate share to the Liquidator within a period of six weeks

from today. As far as, Oman International Bank and I.I.B.I. are concerned, they are directed to release proportionate share of security charges till 15th June, 2006 and thereafter, if not released. Needless to state this means that Oman International Bank will have to pay its share of the monthly charges for future, as well. This direction is common to all Secured Creditors, inasmuch as upon clearance of their past liability within the period stipulated above, they have to release their share of security charges month to month subject,of course to scrutiny and verification of records maintained with the Official Liquidator in this behalf.

10] Company Application is disposed of accordingly with the above directions. All concerned to act upon an authenticated copy.

11] Revised statement which is forwarded by Shri.Mehta duly authenticated by Advocate be forwarded to the Official Liquidator. It is needless to state that upon the Official Liquidator being put in funds by the Secured Creditors the Official Liquidator to take steps to release the amounts for the past period as also for future and pay them accordingly to the applicant within four weeks from the date of receipt.

12] No order as to costs.

(S.C.DHARMADHIKARI,J)